IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8864 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMPURA LAT SEVA SAHKARI MANDLI LTD

Versus

STATE OF GUJARAT

Appearance:

MR NS DESAI for Petitioner

MR PREMAL JOSHI, AGP for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 27/04/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has challenged the order dated 13.6.1990 passed by the Additional Registrar, Cooperative Societies (Appeals) under Section 107 of the Gujarat Cooperative Societies Act and also the notice dated 14.12.1990 issued by the District Registrar, Cooperative Societies pursuant to the aforesaid order.

2. In view of the Course that this Court proposes to

adopt, it is not necessary to set out all the facts in detail. Suffice it to state that by notice dated 18.4.1989 (Annexure "A") the District Registrar had called upon the petitioner society to show cause why the petitioner society should not be wound up in view of the recommendation of the auditor in the audit report for the period from 2.7.1987 to 30.6.1988. The said recommendation was made in view of the following shortcomings :-

(i) The society had not got its accounts audited for the last four years.
(ii) Certain amounts were outstanding from 5 members of the Managing Committee of the petitioner society.
(iii) Audit classification is not there.
(iv) The petitioner society is running into loss of almost Rs.6 lacs and the loss was going on increasing.
(v) The petitioner society had not paid audit fee of Rs.13000/- approximately.

Although the petitioner society was given an opportunity, it did not avail of the opportunity to file reply and the District Registrar passed the order dated 22.9.1989 (Annexure "B") under Section 107 of the Act for winding up and appointing the Liquidator under Section 108(3) of the Act. The petitioner society preferred an appeal before the Additional Registrar (Appeals). There was a delay of 129 days in filing the appeal. When the application for condonation of delay came up for hearing, the learned advocate for the petitioner society was not present. The Additional Registrar (Appeals) dismissed the appeal on the ground that it was time barred. It is against the aforesaid order and the consequential notice issued by the District Registrar for handing over the charge to the Liquidator that the present petition is filed.

3. It is submitted in the petition that the delay in filing the appeal was on account of the fact that the members of the petitioner society had gone on pilgrimage tour of South India for about four months and, therefore, they could not give reply to the show cause notice. It is further submitted that on the date of hearing of the appeal on 13.6.1990, the petitioner's advocate was sick and, therefore, he could not travel from Kapadwanj to Gandhinagar, but he had sent the written arguments before the appellate authority. It is, therefore, submitted that the impugned orders are in violation of the principles of natural justice.

4. Mr Premal Joshi, learned AGP for the respondents states that enough opportunity was given to the petitioner society by the District Registrar as well as by the Additional Registrar (Appeals) and that if the petitioner society did not avail of the said opportunity, it cannot be said that there was any violation of the principles of natural justice. It is true that since the petitioner society did not avail of the opportunity, no fault can be found with the District Registrar in passing the impugned order. As far as dismissal of the appeal on the ground of delay is concerned, there was delay of 129 days beyond the prescribed period of limitation of two months (i.e. 60 days) and the Additional Registrar (Appeals) was not entirely off the mark when he observed that if all the office bearers of the petitioner society go to South India at a time for more than four months, it means that the petitioner society would not be carrying on any business and that there is no business to be carried on.

5. Even so, while upholding the aforesaid orders of the authorities, considering the fact that while issuing notice on the petition on 28.12.1990, this Court had passed an order directing the parties to maintain status quo and the said ad-interim relief was continued while admitting the petition on 10.7.1992 and, therefore, the period of almost 10 years has already rolled by, it would be just and proper to keep the order dated 22.9.1989 and also appellate order dated 13.6.1990 of the Additional Registrar (Appeals), if not already implemented, under abeyance, but the District Registrar shall review the entire situation taking into account the performance of the petitioner society over the last 10 years and thereafter to take an appropriate decision as expeditiously as possible and in any case within six months from the date of receipt of writ of this Court or a certified copy of this order, whichever is earlier. It is also directed that the petitioner society shall cooperate with the authorities for expeditious completion of the proceedings. The District Registrar shall consider whether the order of winding up passed in the year 1989 deserves to be continued/confirmed or whether it deserves to be revoked, in light of performance of the petitioner society in last 10 years. This shall be done without being influenced by the fact that the Additional Registrar (Appeals) had dismissed the appeal of the petitioner society on 13.6.1990. As and when the District Registrar renders his fresh decision as per the aforesaid directions, it will be open to the aggrieved party to have further recourse in accordance with law

such as filing an appeal before the Additional Registrar (Appeals).

6. Subject to the above directions, the petition is disposed of. Rule is discharged with no order as to costs.

April 27, 2000 (M.S. Shah, J.)
sundar/-